

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2216 of 1998

with

FIRST APPEAL No 2217 of 1998

Date of decision: 16-10-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JOGINDAR LALCHAND BHAIYAJI      PRAJAPATI, MINOR

Versus

KHIMAVIRAM BHARWAD  
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Appearance:

1. First Appeal No. 2216 of 1998  
MR PRAVIN GONDALIYA for Petitioner  
None present for Respondents No. 1 and 2

2. First Appeal No 2217 of 1998

MR PRAVIN GONDALIYA for Petitioner

None present for Respondents No. 1 and 2

MR RAJNI H MEHTA for Respondent No. 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/10/98

ORAL JUDGEMENT

These first appeals arise from common award of the Motor Accident Claims Tribunal, Jamnagar, in Claim Case No.559/95 and 560/95 decided on 29th April, 1997, in which the claimant - appellant's grand son and grand mother sustained injury in one and same motor vehicular accident caused by the offending vehicle of which respondent No.1 herein is the owner and respondent No.2 was the driver. The vehicle was insured with respondent No.3. As against the claim of Rs.70,000/- in the case of grand son and Rs.1 lac in the case of grand mother, the Tribunal has awarded sum of Rs.18,850/- and Rs.24,000/respectively to grand son and grand mother as compensation for the injuries sustained by them in the motor vehicular accident. Both these claimants were further awarded interest on the amount of compensation at the rate of 12% per annum from the date of application till the date of realisation. The insurance company has been held liable to indemnify the insured. Notice issued to respondents No.1 and 2 has not been received back. But there is consensus of the advocates appearing for the parties that they are neither necessary nor proper parties to these appeals. Otherwise also I am satisfied that the insurer of the offending vehicle was held responsible to indemnify the liability of the insured as such the owner and driver of the offending vehicle are neither necessary nor proper parties to these appeals and accordingly their names are ordered to be deleted from the cause title of the appeals. Office is directed to make necessary correction in the cause title of the appeals.

2. First Appeal No.2216/98: The amount of compensation awarded under the heads other than the head 'future economic loss' does not warrant any interference of this court in this appeal. However, the amount of compensation awarded by the Tribunal under the head 'future economic loss' is certainly towards lower side

and needs to be adequately enhanced. The appellant in the claim application produced disability certificate issued by Dr. B.J. Punatar who certified that the appellant sustained 10% permanent disability. It is not in dispute that the appellant in this case sustained fracture of femur. However, this certificate produced by the appellant was not relied upon by the Tribunal on the ground that doctor concerned was not examined. Another reason not to rely same has been given by the Tribunal that the appellant has not produced any evidence to show how much disability will be caused to his work and which type of work could not be done by him. After discarding the certificate the Tribunal has taken on its own the permanent disability at 4% and taking the same as 2% of the body as a whole and monthly future loss at Rs.25 of notional income of Rs.1000/-, and applying multiplier of 12, total amount of Rs.3600/- was awarded under the head 'future loss of income'. It is not in dispute that none of the respondents - owner, driver or the insurer - had disputed the medical certificate produced by the appellant. It is understandable where the medical certificate is disputed, then there may be some semblance of justification in the approach of the Tribunal to insist from the appellant to prove this certificate. But where the certificate has not been disputed and where the Tribunal is satisfied that there is permanent disability caused to the appellant as a result of the injury which he sustained in the motor vehicular accident, the percentage of disability has to be taken as per the certificate. In the present case the Tribunal has accepted the fact that the appellant has sustained permanent disability in the motor vehicular accident, but despite the fact that it is not an expert and in absence of any other evidence on record it has its own taken it to be 4% and 2% disability of the body as a whole. This approach of the Tribunal is wholly erroneous on the face of it, and it cannot be allowed to stand.

3. It is true that the certificate of Dr. B.J. Punatar nowhere provides what is the permanent disability of the body as a whole of the appellant as a result of the injury sustained by him in the motor vehicular accident. However, the proper course would have been to take 5% permanent disability of the body as a whole and accordingly I consider it proper in this case on the basis of the medical certificate produced by the appellant.

4. Notional income of the appellant has been taken to be Rs.1000/- and this is also towards lower side. It is true that the appellant was a minor and he would not have

his own income. But if we go by Schedule II of the Motor Vehicles Act, 1988 which has been inserted with effect from 14th November, 1994 i.e. before institution of this case, in such cases the petitioner's income should have been taken to be Rs.15,000/- per annum. Learned counsel for the respondent - insurance company is unable to satisfy me how this income as per the Schedule cannot be taken in the present case. 5% of Rs.15000/- comes to Rs.750/- and this is the future economic loss to the appellant in this case per year. Multiplier applied in this case is 12, which is slightly towards lower side. 16 is a reasonable, just and adequate multiplier in this case. So the total amount under the head 'loss of future' shall be Rs.12,000/-. As against this the Tribunal has awarded only Rs.3600/-. So under this head the claimant appellant shall be entitled to Rs.8400/- as additional compensation and interest thereon at the rate of 12% per annum from the date of the accident till the date of realisation.

5. The respondent Insurance Company is directed to deposit the amount of additional compensation with interest thereon at the rate of 12% per annum from the date of application till the date of deposit in this court within a period of two months from the date of this order. On deposit of this amount by the insurance Company, the Registrar of this court shall invest the same in long term fixed deposit in any nationalised Bank, initially for a period of five years subject to the condition that the monthly interest accrued thereon shall be paid to the claimant appellant by account payee demand draft payable either at Ahmedabad or whichever place he may like. The impugned award of the Tribunal stands modified to this extent.

6. F.A.No.2217/98: In this appeal the appellant has produced disability certificate wherein it is certified that she has sustained 30% disability. But as done in the earlier case this certificate has not been relied upon by the Tribunal for the same reasons as given out in the first case. However, the disability was taken as 10% and 5% of the body as a whole. Taking into consideration notional income of the claimant at Rs.1000/- total compensation of Rs.9000/- under the head 'future economic loss' has been awarded. So far as the compensation under other heads awarded by the Tribunal are concerned, it does not call for interference. The amount of compensation awarded under the head 'future economic loss' only calls for interference. Disability of the body as a whole has to be taken at 15% for the reasons given in the appeal of the grand son, and the notional income has

to be taken as Rs.15,000/- per annum. 15% of Rs.15000/comes to Rs.2250/- per year. Applying the multiplier of 15, the total amount under this head comes Rs.33,755/-, against which the Tribunal has awarded Rs.9,000/-. The appellantclaimant is therefore entitled to additional compensation of Rs.24,755/- and interest thereon at the rate of 12% per annum from the date of filing of the application till the date of deposit.

8. The respondent insurance company is directed to deposit the amount of additional compensation with interest thereon at the rate of 12% per annum from the date of application till the date of deposit of the same in this court, within a period of two months from the date of receipt of copy of this order. On deposit of the amount by the insurance company, the Registrar of this Court is directed to invest the same in long term FDR initially for a period of five years in a nationalised bank subject to the condition that the monthly interest accrued thereon shall be paid to the claimant-appellant by account payee demand draft payable either at Ahmedabad or whichever place she likes. The impugned award of the Tribunal shall stand modified to this extent.

9. No order as to costs in both these appeals.

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